United States District Court
Southern District of Texas

## **ENTERED**

May 18, 2016 David J. Bradley, Clerk

## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS GALVESTON DIVISION

RICHARD WAYNE JENNINGS,

TDCJ #00820776,

Plaintiff,

VS.

CIVIL ACTION NO. 3:11-CV-111

MONTY HUDSPETH, et al,

Defendants.

Defendants.

## **ORDER**

Plaintiff Richard Wayne Jennings (TDCJ #00820776) sought leave to proceed in forma pauperis ("IFP") on appeal (Dkt. 116), and the Court granted his motion (Dkt. 119). However, the Fifth Circuit has pointed out that, because it partially affirmed this Court's dismissal of Jennings's complaint for failure to state a claim, Jennings acquired his third strike under 28 U.S.C. § 1915(g) during this litigation. The partial affirmance counts as a strike—see Patton v. Jefferson Correctional Center, 136 F.3d 458, 462–63 (5th Cir. 1998) (holding that a partial dismissal of a complaint for the reasons given in Section 1915(g) counts as a strike)—and Jennings already had two. See Jennings v. Harvey, et al., No. 4:01-CV-3879 (S.D. Tex. June 28, 2002); Jennings v. Dickerson, et al., No. 4:02-CV-395 (S.D. Tex. Dec. 10, 2002).

In short, under 28 U.S.C. § 1915(g), Jennings cannot appeal this Court's grant of summary judgment to the remaining defendants unless he pays the appellate docketing

fee in full up front. He may not proceed IFP. The Court therefore sua sponte

RECONSIDERS AND VACATES its order granting Jennings leave to proceed IFP on

appeal (Dkt. 119). Jennings's motion for leave to proceed IFP on appeal (Dkt. 116) is

DENIED.

The Court does not vacate its denial of Jennings's request for the appointment of

counsel (Dkt. 114), which was also outlined in docket entry 119.

The Clerk of this Court shall send a copy of this Order to the parties and to the

Clerk of Court of the United States Court of Appeals for the Fifth Circuit. The Fifth

Circuit docket number is 16-40665.

The Clerk of this Court shall also mail a copy of this Order to (1) the Inmate Trust

Fund, P.O. Box 629, Huntsville, Texas 77342-0629 and (2) the TDCJ Office of the

General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas 78711.

SIGNED at Galveston, Texas on May 17

\_ 2016.

GEORGE C. HANKS, JR.

UNITED STATES DISTRICT JUDGE